

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
	)	Criminal No.: 3:00-CR-400-P
v.	)	
	)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and	)	
BENNETT T. MARTIN,	)	
	)	FILED: June 11, 2001
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION  
FOR PRODUCTION OF DOCUMENTS RESPONSIVE  
TO SUBPOENA *DUCES TECUM* ON OR BEFORE JUNE 15

I  
LAW AND ARGUMENT

A. RULE 17(c) AND NIXON PERMIT THE  
INSPECTION OF DOCUMENTS PRIOR TO TRIAL

Rule 17(c) of the Federal Rules of Criminal Procedure provides:

The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

The Rule serves to facilitate trials by “providing a time and place *before* trial for the inspection of the subpoenaed materials.” Bowman Dairy Co. v. United States, 341 U.S. 214, 220 (1951). The party seeking the documents must show:

- (1) that the documents are evidentiary and relevant;
- (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence;

(3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and

(4) that the application is made in good faith and is not intended as a general “fishing expedition.”

United States v. Nixon, 418 U.S. 683, 699-700 (1973).

B. THE SUBPOENA SATISFIES THE *NIXON* REQUIREMENTS

The United States respectfully moves this Court for an Order pursuant to Federal Rule of Criminal Procedure 17(c) requiring defendant Martin News Agency, Inc. (“Martin News”), to produce for the government’s inspection on or before June 15, 2001:

(1) Any and all documents as will show the customers and retailers in Texas to whom your Company sold or distributed magazines or other periodicals, including all dealer guides and any other lists of customers and retailers to whom your Company sold or distributed magazines or other periodicals.

(2) Any and all documents as will show the geographic area(s) in Texas in which your Company sold or distributed magazines or other periodicals.

(3) Any and all documents as will show the customers and retailers in Texas to whom your Company discontinued sales, distribution or service, including all dealer guides and any other lists of discontinued or former customers and retailers.

(4) Any and all documents as will show the geographic area(s) in which your Company discontinued sales, distribution or service.

(5) Any and all documents that relate to any bid given by, or solicited from, your Company, including the complete bid file, contracts (actual or proposed), bids or quotations (actual or proposed), requests for quotes, profit and loss statements, and all supporting and underlying documents that relate to any such bid, including all communications between your Company and any person who requested, was solicited for, or received, a bid.

Documents responsive to this Paragraph are to be produced without regard to whether your Company actually performed any services in connection with the bid.

(6) Any and all documents that relate to any communication between your Company, or an officer, employee or representative thereof (including Ben Martin), and Periodical Management Group, Inc., including any predecessor, successor, affiliate, parent, division, subsidiary, in whole or in part, owner, director, officer, employee or representative thereof.

(7) Any and all documents that relate to any communication between your Company, or an officer, employee or representative thereof (including Ben Martin), and C&S News Agency, Inc., including any predecessor, successor, affiliate, parent, division, subsidiary, in whole or in part, owner, director, officer, employee or representative thereof.

(8) Any and all exit interviews of employees or former employees of your Company, and any and all documents relating to such interviews, including any interviews involving Phillip Bagnall, in which any of the following topics were raised, addressed, or discussed: the customers and retailers whom your Company solicited, the customers and retailers to whom your Company sold or distributed magazines or other periodicals, the customers and retailers to whom your Company discontinued sales, distribution or service, or the geographic areas in which your Company discontinued sales, distribution or service. Such documents include notes, transcripts, video tapes and audio tapes made of such interviews.

See attached. The subpoena defines the Period Covered as January 1, 1990, through December 31, 1996.

This subpoena satisfies the Nixon requirements. First, the subpoena seeks relevant and evidentiary documents. Relevant evidence is evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. The Indictment charges

the defendants and their co-conspirators with conspiring to restrain trade by allocating territories and customers for the sale and distribution of magazines and other periodicals in Dallas, Fort Worth and the surrounding areas of Texas, beginning at least as early as August of 1990 and continuing at least through October 30, 1995, all in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Documents responsive to the subpoena would clearly be relevant to whether the defendants reached and followed into the statute of limitations period an illegal territorial and customer allocation agreement. The documents would show which customers and territories defendants solicited and serviced in the relevant geographic area during the period charged in the Indictment.

Second, the government cannot obtain the documents before trial absent this subpoena. The requested documents are in the possession, custody or control of defendant Martin News. Previously, two grand jury subpoenas were issued to the defendant Martin News: the first on May 14, 1997, and the second on July 20, 1999. The grand jury that issued the subpoenas no longer exists. Though subpoenaed, the United States has still not received certain documents, such as dealer guides, showing which customers Martin News sold to during the charged conspiratorial period, or in which geographic areas Martin News sold or distributed magazines or other periodicals during the charged conspiratorial period. The government can procure the documents only through Rule 17(c).<sup>1</sup>

Third, these documents are essential to the government's case. The customers and

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<sup>1</sup>In a letter dated September 18, 2000, counsel for Martin News, Richard Anderson, promised to produce, even after the grand jury returned an Indictment, any newly discovered responsive documents covered under the subpoena and not yet produced. See attachment. No documents have been produced by Martin News, however.

territories serviced by defendant Martin News are evidence of the alleged agreement at work. Lists of customers and retailers serviced, or not serviced, over a five-year period may be voluminous. The government needs the documents in advance of trial to be able to adequately inspect the documents, determine whether to use them at trial, and prepare summaries or other exhibits as might be appropriate. Unnecessary interruption and delay at trial will result if the defendants are not required to produce these documents until trial.

Finally, the government seeks this subpoena in good faith, and not for improper discovery purposes. The United States has reason to believe that defendant Martin News has such documents within its possession, custody, or control, and that such documents will be relevant and admissible at trial. The government seeks the production of these documents in advance of trial on or before June 15, 2001, in order to facilitate and expedite the trial.

## II CONCLUSION

Accordingly, the United States respectfully requests that the Court issue an order directing the defendant Martin News to produce all documents responsive to this Rule 17(c) subpoena to the United States' office in Cleveland, Ohio, on or before June 15, 2001. This will give the United States sufficient time to review the materials in preparation of trial and to raise any issues about the production at the pre-trial conference set for June 27, 2001.

Respectfully submitted,

SCOTT M. WATSON  
Chief, Cleveland Field Office

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“/s/”  
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